

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:23-cv-00158-MOC-WCM

JASON H. KLOEPFER;
ALISON M. MAHLER,

Plaintiffs,

v.

EASTERN BAND OF
CHEROKEE INDIANS;
OHIO CASUALTY
INSURANCE COMPANY;
DUSTIN SMITH
Sheriff of Cherokee County,
in his individual and official capacity;
JUSTIN JACOBS
Chief Deputy CCSD,
in his individual and official capacity;
DAVID WILLIAMS
Captain CCSD,
in his individual and official capacity;
MILTON TEASDALE
Lieutenant CCSD,
in his individual and official capacity;
MITCHELL MORGAN
Lieutenant CCSD,
in his individual and official capacity;
DREW PAYNE
Lieutenant CCSD,
in his individual and official capacity;
DENNIS DORE
Sergeant CCSD,
in his individual and official capacity;
CODY WILLIAMS
Sergeant CCSD,
in his individual and official capacity;
NOLAN QUEEN
Detective CCSD,

ORDER

in his individual and official capacity;)
JESSICA STILES)
Deputy CCSD,)
in her individual and official capacity;)
J.T. GRAY)
Deputy CCSD,)
in his individual and official capacity;)
JASON HALL)
Deputy CCSD,)
in his individual and official capacity;)
DON LATULIPE)
Deputy CCSD,)
in his individual and official capacity;)
ADAM ERICKSON)
Deputy CCSD,)
in his individual and official capacity;)
PAUL FRY)
Deputy CCSD,)
in his individual and official capacity;)
CARLA NEADEAU)
Chief EBCIPD,)
in her individual and official capacity;)
JOSHUA TAYLOR)
Assistant Chief EBCIPD,)
in his individual and official capacity;)
ROGER NEADEAU, JR.)
Lieutenant Detective EBCIPD,)
in his individual and official capacity;)
NEIL FERGUSON)
Patrol Lieutenant EBCIPD,)
in his individual and official capacity;)
SCOTT BUTTERY)
SWAT Commander EBCIPD,)
in his individual and official capacity;)
JESSE RAMIREZ)
Detective Sergeant EBCIPD,)
in his individual and official capacity;)
JEFF SMITH)
Special Operations Sergeant EBCIPD,)
in his individual and official capacity;)
DUSTIN WOLFE)

Detective EBCIPD,)
in his individual and official capacity;)
CODY MCKINNEY)
Detective EBCIPD,)
in his individual and official capacity;)
NATHAN MESSER)
Special Operations Officer EBCIPD,)
in his individual and official capacity;)
ANDREW SAMPSON)
Special Operations Officer EBCIPD,)
in his individual and official capacity;)
CHRIS HARRIS)
Patrol Officer EBCIPD,)
in his individual and official capacity;)

Defendants.)

)

This matter came before the Court on December 4, 2024 for a status conference, a discovery conference, and a hearing on various matters. The undersigned issued certain oral rulings and took other matters under advisement. This order memorializes those rulings.

For the reasons discussed during the December 4, 2024 proceedings, **IT IS HEREBY ORDERED THAT:**

1. The oral motion by counsel for Defendants Neil Ferguson, Nathan Messer, and Chris Harris to extend their expert designation deadline is **GRANTED IN PART** and the deadline for those defendants to serve their expert disclosures is **EXTENDED** through and including **December 20, 2024**. All other provisions of the Pretrial Order and Case Management

Plan, including the February 4, 2025 deadline to complete court enforceable discovery, remain in effect.

2. Plaintiffs' Motion to Strike (Doc. 54) is **DENIED AS MOOT**.
3. With respect to the discovery issues set out in the Motion for Discovery Conference (Doc. 47) and the Joint Request to Add Issue to be Considered at Discovery Conference (Doc. 53):

A. As to their Pre-Incident Medical Records, Plaintiffs **SHALL PRODUCE**: (1) All of Jason Kloepfer's primary care physician records for the period beginning five years prior to the December 13, 2022 shooting (the "Incident"); (2) All of both Plaintiffs' mental health records for the period beginning five years prior to the Incident; and (3) All of Jason Kloepfer's medical records relating to a 2014 shooting in which he was injured.

B. As to Post-Incident Medical Records, the request by Defendants Ferguson, Messer, and Harris that Plaintiffs be directed to produce these medical records is **DENIED WITHOUT PREJUDICE**, and the parties are instructed to continue to confer regarding this issue, including to determine whether the records sought have now been produced.

C. As to their Residential History, Plaintiffs **SHALL PRODUCE** a full and complete response to Interrogatory 1 to the extent it seeks

information regarding Plaintiffs' residential history following the Incident.

- D. As to the surveillance footage, Plaintiffs **SHALL**: (1) Contact the North Carolina State Bureau of Investigations (the "SBI") and request that the SBI provide Plaintiffs with access to or copies of any and all footage from any camera that was located on Jason Kloefer's property on the date of the Incident and of which the SBI took possession, including but not limited to the four hard drive-based outdoor cameras; (2) From any such materials, produce any information that has been requested by Defendants; and (3) Provide a supplemental answer to Interrogatory 7 and produce information regarding the identity of any companies holding or supporting data for the two cloud-based cameras.
- E. The request by Defendants Ferguson, Messer, and Harris and Plaintiffs for an order establishing a timeframe for an inspection of the property where the Incident occurred is **DENIED AS MOOT**.
- F. The production of documents and provision of information required by this Order shall be completed on or before **December 20, 2024**.
4. Plaintiffs' Request to Add Pleading to Discovery Conference Scheduled for December 4, 2024 (Doc. 62) is **GRANTED**.

5. Plaintiffs' Motion to Compel (Doc. 63) and Plaintiffs' Motion to File First Amended Complaint (Doc. 55) are **TAKEN UNDER ADVISEMENT**.

Signed: December 9, 2024

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

